

# United States Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,380	10/28/2003	Paul A. Spence	SPEN-03C	5321
26875	7590 05/16/200	5	EXAMINER	
WOOD, HI	ERRON & EVANS,	MATTHEWS, WILLIAM H		
2700 CARE	-		ART UNIT	PAPER NUMBER
441 VINE S	TREET	ARTORIT	TALER NOMBER	
CINCINNA	ΓΙ, OH 45202	3738		

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Examiner			Application No.	Applicant(s)				
William H. Matthews (Howle)   3738	Office Action Summary		10/695,380	SPENCE ET AL.				
Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Educations of time may be available used the provision of 30° CR1.13(6), in no event, however, may a reply be timely filled at the 50° (6) MONTHS become an experiment of 30° CR1.13(6), in no event, however, may a reply be timely filled at the 50° (6) MONTHS become an experiment of 30° CR1.13(6), in no event, however, may a reply be timely filled at the 50° (6) MONTHS become as the second of 30° CR1.13(6), in no event, however, may a reply be timely filled at the 50° (6) MONTHS from the mailing date of the 50° (6) MONTHS from the replication of the communication, even if limitly field, may review a virgorial patent by the 50° (6) MONTHS from the replication of the communication, even if limitly field, may review a virgorial patent by the 50° (6) MONTHS from the replication of the communication, even if limitly field, may review a virgorial patent by the 50° (5) MONTHS from the replication of the communication, even if limitly field, may review a virgorial patent by the 50° (5) MONTHS from the replication of the communication, even if limitly field, may review a virgorial patent by the 50° (5) MONTHS from the replication of the communication, even if limitly field, may review a virgorial patent by the second patent by			Examiner	Art Unit				
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THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the provisions of 3 CPR 1.13(6). In no event, however, may a reply be timely find other 50 K (6) MONT TIS from the mailing date of this communication of 10 K (6) MONT TIS from the mailing date of this communication. The provision of 10 K (6) MONT TIS from the mailing date of this communication of 10 K (6) MONT TIS from the mailing date of this communication of 10 K (7) MONT TIS from the mailing date of this communication or 10 K (7) MONT TIS from the mailing date of this communication or 10 K (7) MONT TIS from the mailing date of this communication or 10 K (7) MONT TIS from the mailing date of this communication, even if timely filled, may reduce any examely patient term selfusions after the mailing date of this communication, even if timely filled, may reduce any examely patient term selfusions. See 57 GPR 1.74(b).  Status  1) Responsive to communication(s) filled on 08 March 2005.  2a) This action is FINAL.  2b) This action is FINAL.  2c) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 c.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) Z-10 is/are pending in the application.  4a) Of the above claim(s) 2 and 10 is/are withdrawn from consideration.  5) Claim(s) is/are allowed.  5) Claim(s)	- The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply							
1)⊠ Responsive to communication(s) filed on @8 March 2005.  2a)⊠ This action is FINAL. 2b)□ This action is non-final.  3)□ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)⊠ Claim(s) 7-10 is/are pending in the application.  4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.  5)□ Claim(s) is/are allowed.  6)☒ Claim(s) 7 and 8 is/are rejected.  7)□ Claim(s) is/are objected to.  8)□ Claim(s) are subject to restriction and/or election requirement.  Application Papers  9)□ The specification is objected to by the Examiner.  10)□ The drawing(s) filed on is/are: a)□ accepted or b)□ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11)□ The cath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12)□ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)□ All b)□ Some * ○)□ None of:  1.□ Certified copies of the priority documents have been received.  2.□ Certified copies of the priority documents have been received in Application No  3.□ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)  1)□ Notice of Draftsperson's Patent Drawing Review (PTO-948)  3)□ International Externation Application (PTO-152)	A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any							
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a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)  1) Notice of References Cited (PTO-892)  2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  4) Interview Summary (PTO-413) Paper No(s)/Mail Date  5) Notice of Informal Patent Application (PTO-152)	Priority under 35 U.S.C. §	§ 119						
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### **DETAILED ACTION**

### Election/Restrictions

1. Newly submitted claims 9-10 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the original invention claimed was a prosthetic annuloplasty ring and newly submitted claims 9-10 are drawn to methods of using annuloplasty rings.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 9-10 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

## Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
- 2. Claims 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Seguin et al. US PN 5,607,471.

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valve annulus is not planar and contracts.

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Seguin et al. discloses in figures 2 and lines 27-31 of col. 4 a device for supporting a heart valve comprising a ring asymmetric about a minor axis perpendicular to a major axis and having less area on one side of the minor axis. The ring is described as flexible and when implanted would inherently possess a segment extending downward relative to another segment of the ring because the natural heart

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3. Claims 7-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Cox US PN 6,250,308.

Cox discloses in figures 2a and 2b a device for supporting a heart valve comprising a ring asymmetric about a minor axis perpendicular to a major axis and having less area on one side of the minor axis. The ring is described as flexible and when implanted would inherently possess a segment extending downward relative to another segment of the ring because the natural heart valve annulus is not planar and contracts.

Note as the claims currently require, the major axis may be drawn about any elongated portion of the annuloplasty device.

#### Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to William H. Matthews (Howie) whose telephone number

is 571-272-4753. The examiner can normally be reached on Monday-Friday 10-

6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone

number for the organization where this application or proceeding is assigned is 703-

872-9306.

CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WHM

May 11, 2005

CORRINE McDERMOTT SUPERVISORY PATENT EXAMINER TECHNOLOGY CENTER 3700